

REMARKS

In this office action the Examiner rejected claims 6-9 under 35 U.S.C. 103(a) as being unpatentable over Snow (US 4,363,841). To support the rejection the Examiner stated, "Snow discloses a laminated packaging material comprising an outermost layer of polyester or polypropylene (**corresponding to the thermformable base layer of the claimed invention**), a metallic foil layer of aluminum (**corresponding to the barrier layer of the claimed invention**) and an innermost layer of heat sealable polyolefin such as LLDPE (**corresponding to the laminate layer of the claimed invention**) (Column 2, lines 12-55). Once the laminate material is formed, the containers may be folded and heat sealed (Column 33, lines 12-32).

Snow does not teach that the polypropylene base layer is filled.

However, it would have been obvious to add filler to any of the polymeric layers in the laminate taught by Snow given that the addition of filler decrease the cost of the laminate by decreasing the amount of the polymer. With regards to the process limitations of claim 8, the Examiner would like to remind the Applicants that the determination of patentability for product claims containing process limitations is based on the product itself and not the method of production. If the product is the same or obvious from a product of the prior art, the claim

is unpatentable even though the prior art was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed.Cir. 1985) and also see MPEP 2113. In this case, the product (i.e., the laminate) is the same despite the process limitations of heat-treating with moist heat at a pressure greater than atmospheric pressure. All limitations of the claimed invention are disclosed in the above reference."

The Examiner is correct in stating that adding filler would reduce costs. However, the purpose of the addition of filler according to the present invention is to enhance the rigidity of the polyester layer and thus, to give a dimensionally stable container, contrary to the flexible container of Snow. As Snow only mentions flexible containers nothing in that reference gives a person skilled in the art any suggestion to add filler to give a dimensionally stable container.

One basic problem intended to be solved by the present invention is, that in the production of dimensionally stable containers (irrelevant of method) from a packaging laminate having material layers adhering to each other, the material layers will be exposed to large tensile stresses during the forming of the laminate into a container. If such tensile stresses are excessive, that may lead to, that at least some of the layers will crack and thereby, leaks will be formed both in the laminate structure as well as the formed container. It would

be particularly grave if a barrier layer would crack. In order to counteract such cracks in the particularly stress sensitive barrier layers, according to the present invention it is important that these layers from start (i.e. during production of the packaging laminate) only partially adhere to the other layers in order to make a slight relative sliding possible of the layers when the packaging laminate in a subsequent forming operation is formed into containers (either by forming or thermo forming). The final adherence of the layers is achieved after forming and filling of the containers by means of a further heat treatment, which according to the invention preferably is made in connection with sterilization of the contained product by heat treatment in an autoclave in order to prolong shelf-life.

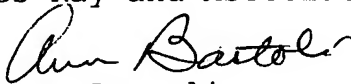
The problem described above does not apply for flexible containers (such as pouches), which are produced with totally different principles or production compared to the dimensionally stable containers.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 6-9 under 35 U.S.C. 103(a) as being unpatentable over Snow (US 4,363,841).

In view of the discussion supra, it is believed that the invention as described in claims 6-9 is patentable and that this application is now in condition for allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the examination and/or allowance of the application, the Examiner is invited to contact the undersigned agent for applicant by telephone at (412) 380-0725, if necessary, to resolve any remaining questions or issues by interview and/or Examiner's Amendment as to any matter.

Respectfully submitted,
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